

AMENDED IN SENATE JUNE 12, 2008
AMENDED IN SENATE SEPTEMBER 7, 2007
AMENDED IN SENATE JULY 20, 2007
AMENDED IN SENATE JUNE 19, 2007
AMENDED IN ASSEMBLY APRIL 12, 2007
AMENDED IN ASSEMBLY MARCH 29, 2007
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 611

Introduced by Assembly Member Niello Nakanishi

February 21, 2007

~~An act to add Section 8611.5 to the Water Code, relating to water.~~
An act to amend Sections 7085 and 7085.5 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 611, as amended, ~~Niello Nakanishi. Flood control: backup water supply conduit.~~ *Contractors: arbitration procedures.*

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board in the Department of Consumer Affairs.

Existing law establishes an arbitration process administered by the board to resolve disputes between contractors and consumers. Existing law authorizes the registrar of contractors, after investigating a complaint and finding a possible violation and with the concurrence of the licensee and the complainant, to refer the alleged violation and

complaint to arbitration if damages or potential damages are greater than the amount of the licensing bond required, but less than \$50,000.

This bill would increase that amount to \$100,000.

Under the arbitration process described above, existing law authorizes an arbitrator to grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board. Existing law authorizes the arbitrator, in his or her sole discretion, to award costs or expenses.

This bill would exclude attorney's fees from those awardable costs or expenses.

~~Existing law authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.~~

~~This bill would authorize the Reclamation Board to participate with the United States Army Corps of Engineers in a project amendment that includes the installation of a backup water supply conduit into Folsom Lake for the City of Roseville, City of Folsom, and the San Juan Water District as a part of the construction of an auxiliary Folsom Dam spillway. The bill would subject the approval and use of the conduit to various requirements, including the requirement that local public agencies pay for the planning, design, and installation of the conduit. The bill would indemnify the State of California for any act or omission performed by an officer, agent, or employee of the State of California related to the implementation or use of the conduit.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 7085 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 7085. (a) After investigating any verified complaint alleging
- 4 a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and
- 5 any complaint arising from a contract involving works of
- 6 improvement and finding a possible violation, the registrar may,
- 7 with the concurrence of both the licensee and the complainant,
- 8 refer the alleged violation, and any dispute between the licensee

1 and the complainant arising thereunder, to arbitration pursuant to
2 this article, provided the registrar finds that:

3 (1) There is evidence that the complainant has suffered or is
4 likely to suffer material damages as a result of a violation of
5 Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint
6 arising from a contract involving works of improvement.

7 (2) There are reasonable grounds for the registrar to believe that
8 the public interest would be better served by arbitration than by
9 disciplinary action.

10 (3) The licensee does not have a history of repeated or similar
11 violations.

12 (4) The licensee was in good standing at the time of the alleged
13 violation.

14 (5) The licensee does not have any outstanding disciplinary
15 actions filed against him or her.

16 (6) The parties have not previously agreed to private arbitration
17 of the dispute pursuant to contract or otherwise.

18 (7) The parties have been advised of the provisions of Section
19 2855 of the Civil Code.

20 For the purposes of paragraph (1), “material damages” means
21 damages greater than the amount of the bond required under
22 subdivision (a) of Section 7071.6, but less than ~~thirty~~ *one hundred*
23 ~~thousand dollars (\$50,000)~~ *thousand dollars (\$100,000)*.

24 (b) In all cases in which a possible violation of the sections set
25 forth in paragraph (1) of subdivision (a) exists and the contract
26 price, or the demand for damages is equal to or less than the amount
27 of the bond required under Section 7071.6, but, regardless of the
28 contract price, the complaint shall be referred to arbitration,
29 utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of
30 subdivision (a).

31 *SEC. 2. Section 7085.5 of the Business and Professions Code*
32 *is amended to read:*

33 7085.5. Arbitrations of disputes arising out of cases filed with
34 or by the board shall be conducted in accordance with the following
35 rules:

36 (a) All “agreements to arbitrate” shall include the names,
37 addresses, and telephone numbers of the parties to the dispute, the
38 issue in dispute, and the amount in dollars or any other remedy
39 sought. The appropriate fee shall be paid by the board from the
40 Contractors’ License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(3) The board shall adopt regulations setting minimum qualification standards for listed arbitrators based upon relevant training, experience, and performance.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether

1 the arbitrator should be disqualified and shall inform the parties
2 of its decision, which shall be conclusive.

3 (d) The board or appointed arbitration association may appoint
4 another arbitrator if a vacancy occurs, or if an appointed arbitrator
5 is unable to serve in a timely manner.

6 (e) (1) The board or appointed arbitration association shall
7 provide the parties with a list of the times and dates, and locations
8 of the hearing to be held. The parties shall notify the arbitrator,
9 within seven calendar days of the mailing of the list, of the times
10 and dates convenient to each party. If the parties fail to respond
11 to the arbitrator within the seven-day period, the arbitrator shall
12 fix the time, place, and location of the hearing. An arbitrator may,
13 at the arbitrator's sole discretion, make an inspection of the
14 construction site ~~which~~ *that* is the subject of the arbitration. The
15 arbitrator shall notify the parties of the time and date set for the
16 inspection. Any party who so desires may be present at the
17 inspection.

18 (2) The board or appointed arbitration association shall fix the
19 time, place, and location of the hearing for all cases referred to
20 arbitration pursuant to subdivision (b) of Section 7085. An
21 arbitrator may, at the arbitrator's sole discretion, make an
22 inspection of the construction site ~~which~~ *that* is the subject of the
23 arbitration. The arbitrator shall notify the parties of the time and
24 date set for the inspection. Any party who desires may be present
25 at the inspection.

26 (f) Any person having a direct interest in the arbitration is
27 entitled to attend the hearing. The arbitrator shall otherwise have
28 the power to require the exclusion of any witness, other than a
29 party or other essential person, during the testimony of any other
30 witness. It shall be discretionary with the arbitrator to determine
31 the propriety of the attendance of any other person.

32 (g) Hearings shall be adjourned by the arbitrator only for good
33 cause.

34 (h) A record is not required to be taken of the proceedings.
35 However, any party to the proceeding may have a record made at
36 its own expense. The parties may make appropriate notes of the
37 proceedings.

38 (i) The hearing shall be conducted by the arbitrator in any
39 manner which will permit full and expeditious presentation of the
40 case by both parties. Consistent with the expedited nature of

1 arbitration, the arbitrator shall establish the extent of, and schedule
2 for, the production of relevant documents and other information,
3 the identification of any witnesses to be called, and a schedule for
4 any hearings to elicit facts solely within the knowledge of one
5 party. The complaining party shall present its claims, proofs, and
6 witnesses, who shall submit to questions or other examination.
7 The defending party shall then present its defenses, proofs, and
8 witnesses, who shall submit to questions or other examination.
9 The arbitrator has discretion to vary this procedure but shall afford
10 full and equal opportunity to the parties for the presentation of any
11 material or relevant proofs.

12 (j) The arbitration may proceed in the absence of any party who,
13 after due notice, fails to be present. The arbitrator shall require the
14 attending party to submit supporting evidence in order to make an
15 award. An award for the attending party shall not be based solely
16 on the fact that the other party has failed to appear at the arbitration
17 hearing.

18 (k) The arbitrator shall be the sole judge of the relevancy and
19 materiality of the evidence offered and conformity to legal rules
20 of evidence shall not be required.

21 (l) The arbitrator may receive and consider documentary
22 evidence. Documents to be considered by the arbitrator may be
23 submitted prior to the hearing. However, a copy shall be
24 simultaneously transmitted to all other parties and to the board or
25 appointed arbitration association for transmittal to the arbitrator
26 or board appointed arbitrator.

27 (m) The arbitrator shall specifically inquire of the parties
28 whether they have any further proofs to offer or witnesses to be
29 heard. Upon receiving negative replies, the arbitrator shall declare
30 the hearing closed and minutes thereof shall be recorded. If briefs
31 are to be filed, the hearing shall be declared closed as of the final
32 date set by the arbitrator for the receipt of briefs. If documents are
33 to be filed as requested by the arbitrator and the date set for their
34 receipt is later than that set for the receipt of briefs, the later date
35 shall be the date of closing the hearings. The time limit within
36 which the arbitrator is required to make the award shall commence
37 to run, in the absence of other agreements by the parties, upon the
38 closing of the hearings.

39 (n) The hearing may be reopened on the arbitrator's own motion.

1 (o) Any party who proceeds with the arbitration after knowledge
2 that any provision or requirement of these rules has not been
3 complied with, and who fails to state his or her objections to the
4 arbitrator in writing, within 10 calendar days of close of hearing,
5 shall be deemed to have waived his or her right to object.

6 (p) (1) Except as provided in paragraph (2), any papers or
7 process necessary or proper for the initiation or continuation of an
8 arbitration under these rules and for any court action in connection
9 therewith, or for the entry of judgment on an award made
10 thereunder, may be served upon any party (A) by regular mail
11 addressed to that party or his or her attorney at the party's last
12 known address, or (B) by personal service.

13 (2) Notwithstanding paragraph (1), in all cases referred to
14 arbitration pursuant to subdivision (b) of Section 7085 in which
15 the contractor fails or refuses to return an executed copy of the
16 notice to arbitrate within the time specified, any papers or process
17 specified in paragraph (1) to be sent to the contractor, including
18 the notice of hearing, shall be mailed by certified mail to the
19 contractor's address of record.

20 (q) The award shall be made promptly by the arbitrator, and
21 unless otherwise agreed by the parties, no later than 30 calendar
22 days from the date of closing the hearing, closing a reopened
23 hearing, or if oral hearing has been waived, from the date of
24 transmitting the final statements and proofs to the arbitrator.

25 The arbitrator may for good cause extend any period of time
26 established by these rules, except the time for making the award.
27 The arbitrator shall notify the parties of any extension and the
28 reason therefor.

29 (r) (1) The arbitrator may grant any remedy or relief that the
30 arbitrator deems just and equitable and within the scope of the
31 board's referral and the requirements of the board. The arbitrator,
32 in his or her sole discretion, may award costs or expenses,
33 *excluding attorney's fees*.

34 (2) The amendments made in paragraph (1) during the 2003–04
35 Regular Session shall not be interpreted to prevent an arbitrator
36 from awarding a complainant all direct costs and expenses for the
37 completion or repair of the project.

38 (s) The award shall become final 30 calendar days from the date
39 the arbitration award is issued. The arbitrator, upon written

1 application of a party to the arbitration, may correct the award
2 upon the following grounds:

3 (1) There was an evident miscalculation of figures or an evident
4 mistake in the description of any person, things, or property
5 referred to in the award.

6 (2) There is any other clerical error in the award, not affecting
7 the merits of the controversy.

8 An application for correction of the award shall be made within
9 10 calendar days of the date of service of the award by serving a
10 copy of the application on the arbitrator, and all other parties to
11 the arbitration. Any party to the arbitration may make a written
12 objection to the application for correction by serving a copy of the
13 written objection on the arbitrator, the board, and all other parties
14 to the arbitration, within 10 calendar days of the date of service of
15 the application for correction.

16 The arbitrator shall either deny the application or correct the
17 award within 30 calendar days of the date of service of the original
18 award by mailing a copy of the denial or correction to all parties
19 to the arbitration. Any appeal from the denial or correction shall
20 be filed with a court of competent jurisdiction and a true copy
21 thereof shall be filed with the arbitrator or appointed arbitration
22 association within 30 calendar days after the award has become
23 final. The award shall be in writing, and shall be signed by the
24 arbitrator or a majority of them. If no appeal is filed within the
25 30-calendar day period, it shall become a final order of the registrar.

26 (t) Service of the award by certified mail shall be effective if a
27 certified letter containing the award, or a true copy thereof, is
28 mailed by the arbitrator or arbitration association to each party or
29 to a party's attorney of record at their last known address, address
30 of record, or by personally serving any party. Service may be
31 proved in the manner authorized in civil actions.

32 (u) The board shall pay the expenses of one expert witness
33 appointed by the board when the services of an expert witness are
34 requested by either party involved in arbitration pursuant to this
35 article and the case involves workmanship issues that are itemized
36 in the complaint and have not been repaired or replaced. Parties
37 who choose to present the findings of another expert witness as
38 evidence shall pay for those services. Payment for expert witnesses
39 appointed by the board shall be limited to the expert witness costs
40 for inspection of the problem at the construction site, preparation

1 of the expert witness' report, and expert witness fees for appearing
2 or testifying at a hearing. All requests for payment to an expert
3 witness shall be submitted on a form that has been approved by
4 the registrar. All requests for payment to an expert witness shall
5 be reviewed and approved by the board prior to payment. The
6 registrar shall advise the parties that names of industry experts
7 may be obtained by requesting this information from the registrar.

8 (v) The arbitrator shall interpret and apply these rules insofar
9 as they relate to his or her powers and duties.

10 (w) The following shall apply as to court procedure and
11 exclusion of liability:

12 (1) The board, the appointed arbitration association, or any
13 arbitrator in a proceeding under these rules is not a necessary party
14 in judicial proceedings relating to the arbitration.

15 (2) Parties to these rules shall be deemed to have consented that
16 judgment upon the arbitration award may be entered in any federal
17 or state court having jurisdiction thereof.

18 (3) The board, the appointed arbitration association, or any
19 arbitrator is not liable to any party for any act or omission in
20 connection with any arbitration conducted under these rules.

21 ~~SECTION 1. Section 8611.5 is added to the Water Code, to~~
22 ~~read:~~

23 ~~8611.5. The Reclamation Board may participate with the United~~
24 ~~States Army Corps of Engineers in a project amendment that~~
25 ~~includes the installation of a backup water supply conduit into~~
26 ~~Folsom Lake for the City of Roseville, City of Folsom, and the~~
27 ~~San Juan Water District as a part of the construction of an auxiliary~~
28 ~~Folsom Dam spillway, which is subject to the Project Cooperation~~
29 ~~Agreement entered into on March 30, 2004, by the United States~~
30 ~~Army Corps of Engineers, the State of California, represented by~~
31 ~~the Reclamation Board, and the Sacramento Area Flood Control~~
32 ~~Agency. Approval of and use of the conduit shall be subject to all~~
33 ~~of the following:~~

34 ~~(a) The planning, design, and installation of the conduit shall~~
35 ~~be paid by the local agencies.~~

36 ~~(b) The planning, design, and installation of the conduit shall~~
37 ~~not delay the completion of the auxiliary spillway into another~~
38 ~~flood season.~~

39 ~~(c) The use of the conduit shall connect to a variable level intake~~
40 ~~structure for the protection of aquatic ecosystems.~~

- 1 ~~(d) The use of the conduit shall be subject to the Sacramento~~
- 2 ~~Water Forum Agreement.~~
- 3 ~~(e) The conduit shall not be used to deliver water outside of the~~
- 4 ~~existing service area.~~
- 5 ~~(f) Implementation or use of the conduit under this section does~~
- 6 ~~not impose liability upon, or require indemnification by the State~~
- 7 ~~of California for any act or omission performed by an officer,~~
- 8 ~~agent, or employee of the State of California.~~